

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Chong Seng Cheng et al.	Group Art Unit: 2182
Serial No.: 09/803,173	Examiner: Gurtej Bansal
Filed: March 9, 2001	Confirmation No.: 9334
Title: Portable Data Storage Device	Docket No.: 1601457-0004

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Date: May 7, 2012

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APPEAL BRIEF

This is an appeal pursuant to 37 C.F.R. § 41.37 from the decision of the Examiner in the above-identified application as set forth in the final Office Action dated May 5, 2011. The rejected claims are reproduced in Appendix A. A Notice of Appeal was filed on November 7, 2011.

REAL PARTY IN INTEREST

The assignee, Trek Technology (Singapore) Pte. Ltd., of Applicants, Chong Seng Chang and Teng Pin Poo, is the real party of interest in the above-identified U.S. Patent Application.

RELATED APPEALS AND INTERFERENCES

A prior appeal in the above-identified U.S. Patent Application, Appeal 2008-006002, was decided by the Board on November 20, 2009. A copy of the Decision on Appeal and the Decision on Request for Rehearing are submitted herewith in the Related Proceedings Appendix.

STATUS OF CLAIMS

Claims 22-24 and 26-30 are pending in the application. Claims 22-24 and 26-30 were rejected in the final Office Action mailed May 5, 2011. Claims 1-21 and 25 have been canceled. Claims 22-24 and 26-30 are on appeal.

STATUS OF AMENDMENTS

Appellants amended claims 22, 29, and 30 and canceled claim 25 in an Amendment dated July 26, 2010. These amendments were entered and claims 22-24 and 26-30 were rejected in the final Office Action dated May 5, 2011.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 22

Appellants' invention is directed to a unitary portable data storage device that plugs directly into a computer's Universal Serial Bus (USB) port. *See* Specification, page 1, lines 3-4; page 1, line 24 to page 2, line 4; page 5, lines 18-19. The claimed unitary portable data storage device provides advantages over conventional data storage devices, which generally fall into two categories. *See* Specification, page 1, line 6 to page 2, line 11. The first category is electronic, solid-state memory devices such as read-only memories (ROMs) and random access memories (RAMs). *See* Specification page 1, lines 6-11. These prior art memory devices are typically internal to a computer and

are not removable or portable. *See id.* The second category of prior art memory devices is surface-based data storage devices in which data is typically stored on the surface of, e.g., a magnetic disk or a Compact Disk (CD). *See* Specification, page 1, lines 13-22. The prior art memory devices falling into this second category typically require a mechanical drive mechanism to read the data on them. *See id.* The combination of these storage devices and the drive mechanism is generally bulky and/or delicate because of the moving parts in them. *See id.*

Appellants' unitary portable data storage device functions portably like a magnetic disk or a CD but eliminates the moving parts and the mechanical drive mechanism by employing as its storage media the electronic, solid-state memory devices. *See* Specification page 1, line 24 to page 2, line 11.

As illustrated in Figure 1 of the application, reproduced below, the device 10 includes a USB plug 1, which is coupled to a USB interface device 2, which is coupled to a micro-controller 3, which is coupled to a flash memory 4. *See* Specification page 3, lines 22-24. The micro-controller 3 includes a read-only memory (ROM) 5, which stores a program to control the operations of the micro-controller 3. *See* Specification page 3, line 24 to page 4, line 2.

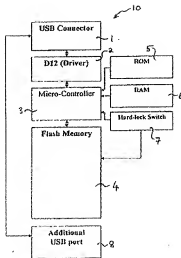


Figure 1 of Appellants' Application

GROUND OF REJECTION TO BE REVIEWED

1. The rejection of claim 22 as unpatentable under 35 U.S.C. § 112, first paragraph, as failing to satisfy the written description requirement.
2. The rejection of claim 22 as unpatentable under 35 U.S.C. § 112, second paragraph, as being indefinite.
3. The rejection of claims 22-24 and 26-28 under 35 U.S.C. § 103(a) as being anticipated by U.S. Patent No. 6,748,541 to Margalit et al.
4. The rejection of claims 29 and 30 as unpatentable under 35 U.S.C. § 103(a) over Margalit in view of U.S. Patent No. 6,407,949 to Jha et al.

ARGUMENT

1. Request to Correct Inventorship

A Request to Correct Inventorship to add inventor Teng Pin Poo was filed on May 20, 2004. Appellants respectfully request that the Director issue a decision on the Request and issue an updated Filing Receipt showing both Chong Seng Cheng and Teng Pin Poo as the joint inventors.

2. Rejection of claim 22 under 35 U.S.C. § 112, first paragraph

The Examiner rejected “claim 1” under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Appellants have taken the Examiner’s reference to “[c]laim 1” as having been intended to refer to claim 22. Appellants respectfully traverse.

To comply with 35 U.S.C. § 112, first paragraph, “the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question.” *Fujikawa v. Wattanasin*, 93 F.3d 1159, 1570 (Fed. Cir. 1996); *Fiers v. Revel*, 984 F.2d 1164, 1170 (Fed. Cir. 1993); *In re Kaslow*, 707 F.2d 1366, 1375 (Fed. Cir. 1983); *see also Vas-Cath v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991). “The [Federal Circuit] and its predecessor have repeatedly held that claimed subject matter ‘need not be described *in haec verba*’ in the specification to satisfy the written description requirement.” *Univ. of Rochester v. G.D. Searle & Co.*, 358 F.3d 916, 922-23 (Fed. Cir. 2004). When the express or inherent support in the specification is not present, implicit support in the disclosure will suffice. *See* MPEP 2163(I)(B) (8th ed., Sept. 2007) (“While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure.”).

The Examiner stated that the specification as originally filed does not support the limitation “...having a memory space at least as large as the memory space of the magnetic disk or CD,” recited in claim 22. Appellants submit that support for this limitation can be found on page 5, lines 11-14 of the specification. This portion of the specification states “[t]he device 10 also includes a USB socket 8 that is coupled directly

to the USB plug 1 and permits the other USB devices to be coupled to the USB via the device 10. For example, if a user wishes to increase memory space, a USB plug 1 of a second memory device 10 may be connected to the USB socket 8.” This disclosure discloses to the skilled artisan that the memory device 10 has a certain memory space, which can be increased by connecting a second memory device 10 to a first memory device 10.

Further, support for this limitation can be found on page 1, lines 13-22 of the specification, and on page 2, lines 6-11 of the specification, which states that “[a]n advantage of the invention is...to provide a portable data storage device which...does not include moving parts or require a mechanical drive mechanism to read the data....” This passage, read in light of page 1, lines 13-22 of the specification, identifying then-existing storage devices such as magnetic disks and CD-ROMs as deficient due to, for example, their “bulky and/or delicate moving parts,” provides support for the claim limitation. To replace an existing device which has particular deficiencies with a new device addressing those deficiencies, the new device must not only address those deficiencies, but it must also be capable of performing substantially the same function as the existing device. Here, the claimed portable data storage device addresses not only the deficiencies of the bulk and/or delicate moving parts of magnetic disk and CD-ROM systems, but also is capable of storing at least as much data as those devices. At the time of the invention, it was well known that a memory size of a typical magnetic disk was approximately one and a half megabytes. See Ex. E, Hyde Affidavit, ¶ 13. To serve as an effective replacement for magnetic disks and CD-ROMs, the claimed portable data storage device must have a memory space that is at least as large as a magnetic disk or CD-ROM.

Support for this limitation can also be found on page 4, lines 19-25 of the specification, which discloses that in one embodiment the flash memory 4 can be divided into zones. This portion of the specification states that one of the zones “can be used typically for storing a user’s data.” Because the memory 4 is capable of being divided into at least two zones, where one zone can be used for storing a user’s data, the memory 4 necessarily has sufficient memory space to enable user data to be stored in a portion (zone) of the memory.

Because the specification discloses that the portable data storage device has a certain memory space, is intended to replace a magnetic disk or CD-ROM, and can store user data in a portion (zone) of its memory space, the limitation “...having a memory space at least as large as the memory space of the magnetic disk or CD” is supported by the disclosure of the specification. Appellants respectfully submit that the as-filed specification satisfies the written description requirement of § 112, first paragraph, and request that the rejection of claim 22 under § 112 be withdrawn.

3. Rejection of claim 22 under 35 U.S.C. § 112, second paragraph

The Examiner rejected claim 22 under 35 U.S.C. § 112, second paragraph, as being indefinite. Appellants respectfully traverse.

The Examiner stated that the specification as originally filed does not support claim 22 insofar as claim 22, in the Examiner’s words, “compares the size of the memory to a magnetic disk or CD,” because the size of these devices could vary. The Examiner further stated that “[t]he limitation ‘...to serve as an alternative to a magnetic disk or CD’ does not further help to define the size of a magnetic disk or CD because a storage

medium of even a single bit, byte, or etc. can be used to serve as an alternative to a magnetic disk or CD.”

Appellants respectfully submit that a storage medium of a single bit or single byte cannot serve as an effective alternative to a magnetic disk or CD. As explained above, to serve as an effective replacement for magnetic disks and CD-ROMs, the claimed portable data storage device must have a memory space that is at least as large as a magnetic disk or CD-ROM. Further, at the time of the invention it was well known that a memory size of a magnetic disk was approximately one and a half megabytes. See Ex. E, Hyde Affidavit, ¶ 13.

The fact that the storage capacity of a magnetic disk or CD can vary does not automatically render claim 22 indefinite. See MPEP 2173.05(b). “Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.” *Id.* One of ordinary skill in the art would understand that the phrase “a memory space at least as large as the memory space of a magnetic disk or CD to enable the unitary portable data storage device to serve as an alternative to a magnetic disk or CD” defines a memory space having at least as much capacity as a magnetic disk or CD. One of ordinary skill in the art would also be well aware of the finite number of storage capacities of existing magnetic disks or CDs. One could pick and choose an appropriate size of a magnetic disk or CD depending on the situation. Similarly, one could pick and choose an appropriate size for the memory of the unitary portable data storage device depending on the situation. Thus this limitation is definite.

The Examiner also stated that the specification as originally filed does not support the limitation "...capable of storing software for installation to the computer or of receiving and storing..." recited in claim 22, because this limitation does not clearly articulate whether the invention actually does this or is simply capable of doing this.

Appellants respectfully submit that the plain meaning of the phrase "capable of" is that the claimed portable data storage device has the capability to store software. With respect to the Examiner's question whether the claimed storage device "actually does" store software, Appellants respond that, because the claimed storage device is "capable of" storing software, it can "actually" do so at the direction of a user. One of ordinary skill in the art would understand that "capable of storing software" as used in the preamble of claim 22 is definite in expressing the portable data storage device's ability to store software if a user so chooses.

Appellants respectfully submit that claim 22 satisfies the requirements of § 112, second paragraph, and thus is not indefinite. Appellants respectfully request that this rejection be withdrawn.

3. Rejection of claims 22-24 and 26-28 under 35 U.S.C. § 102(e)

The Examiner rejected claims 22-24 and 26-28 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,748,541 to Margalit et al. Appellants respectfully traverse.

Claim 22 recites a unitary portable data storage device that comprises a non-volatile solid-state memory having a memory size at least as large as the memory size of a magnetic disk or CD, and a memory controller to control storage of data in the memory in a manner to enable the unitary portable data storage device to serve as an alternative to

a magnetic disk or CD, the data including at least user data that is not authorization data. Margalit does not disclose a data storage device that is able to serve as an alternative to a magnetic disk or CD. Margalit also does not disclose a data storage device with a memory having a memory size at least as large as the memory size of a magnetic disk or CD.

Margalit discloses a device to be used by mobile users to interact with flexibly connectible computer systems ("FCCS"). *See, e.g.,* Margalit, col. 2:9-18; 2:22-29. Margalit discloses a device designed to authenticate a user to allow access to a host computer or network, and this FCCS device does not have a memory with a memory size at least as large as the memory size of a magnetic disk or CD. Margalit does not disclose that the FCCS device can serve as an alternative to a magnetic disk or CD. Thus Margalit does not anticipate claim 22.

Claim 22 recites "a non-volatile solid-state memory... having a memory space at least as large as the memory space of a magnetic disk or CD to enable the unitary portable data storage device to serve as an alternative to a magnetic disk or CD." Margalit does not disclose this limitation. Margalit does not disclose a device that can "serve as an alternative to a magnetic disk or CD." Margalit discloses a device that is analogous to a memory smart card. Margalit, col. 4:20-22. "The token may authenticate information and/or store passwords or electronic certificates in a token which may be the size of a domestic house key. Preferably, when the token is inserted into a flexible connection providing port, a highly secure 'dual factor authentication' process . . . takes place in which (a) the electronic token is 'read' by the host PCC or network and (b) the user types in his or her personal password for authorization. Suitable applications . . .

include authentication for VPN, extranet and e-commerce.” Margalit, col. 3:41-52. The Margalit FCCS device is a type of electronic key to control access to a host computer or network and protect confidential information. Because the purpose of the Margalit device is to authenticate a user to access a separate host computer or network, there is no reason for that device to have a memory space to enable it to serve as an alternative to a magnetic disk or CD.

As shown in a 1998 press release from Aladdin Knowledge Systems (the assignee of the Margalit patent), the purpose and function of the Aladdin USB smart card device is to provide software security. See Exhibit A, “Aladdin Announces SmartHASP Software Protection on a Smart Card,” Business Wire Press Release, July 2, 1998. Even today, the Aladdin USB smart card devices use the two-factor authentication disclosed in Margalit for “user authentication, password management, secure digital signatures, and data security solutions.” See Exhibit B, “eToken Pro Smart Card – Security and Strong Two-Factor Authentication”; Exhibit C, “Aladdin eToken Pro Usbkey”; and Exhibit D, “Aladdin eToken Pro USB 72k – USB security key.” The purpose and function of the Aladdin devices is clearly providing security to data and software.

In contrast, the purpose and function of a magnetic disk or CD is to store data, and to enable transfer of data from one computer to another. See Ex. F, Kim Affidavit, ¶¶6-10. A magnetic disk or CD can store a variety of types of files, and at the time of the invention it was well known that a memory size of a magnetic disk was approximately one and a half megabytes. See Ex. E, Hyde Affidavit, ¶ 13. A magnetic disk or CD has a function that is clearly different than that of a USB smart card token device as disclosed in Margalit. As the portable data storage device of claim 22 can “serve as an alternative

to a magnetic disk or CD,” it too has a different purpose and function than the USB smart card token of Margalit. The portable data storage device of claim 22 provides data storage. *See e.g.*, Ex. E, Hyde Affidavit, ¶ 24 (noting statements by the industry recognizing the benefits of Appellants’ storage device). The device disclosed by Margalit does not have the same structure, purpose, or function as the claimed portable data storage device, and thus Margalit does not disclose a portable data storage device that is able “to serve as an alternative to a magnetic disk or CD.”

Margalit’s disclosure of a FCCS smart card token device that uses “dual factor authentication” to protect software or data does not teach or disclose a portable data storage device that comprises a memory and a memory controller that enable the portable data storage device to serve as an alternative to a magnetic disk or CD. Margalit’s FCCS device that is analogous to a smart card is not a mass storage device that can serve as an alternative to a magnetic disk or CD.

Further, Margalit does not disclose a device with a memory space “at least as large as the memory space of a magnetic disk or CD.” Although, as the Examiner noted, Margalit discloses that the FCCS device can store confidential medical information (col. 7:13-16), this passing reference does not disclose that storage of this information requires a memory space of any particular size. This portion of Margalit does not disclose that the FCCS device has a memory with a memory space that is “at least as large as the memory space of a magnetic disk or CD.” Margalit discloses that storing confidential medical information is one of many smart card security functionalities that the FCCS device is intended to provide. Margalit, col. 7:5-16. Appellants respectfully submit that, at the time of the invention, it was well known that the memory space of a smart card was very

small (up to only 1 kilobyte) and that a memory size of a magnetic disk was approximately one megabyte. *See* Ex. E, Hyde Affidavit, ¶¶ 13 & 21. Even today, devices manufactured by the assignee of the Margalit patent (Aladdin) have a memory capacity of less than one megabyte. *See* Exhibits B-D (showing Aladdin USB smart card devices having a memory capacity of 72 kilobytes). Thus, Margalit does not disclose a device having a memory space “at least as large as the memory space of a magnetic disk or CD.”

The Examiner cited to the prior decision of the Board of Appeals and Interferences, page 8, where the Board stated “we do not see why the capacity, if interpreted to refer to an amount of memory, requires more than a single byte (or bit) of memory,” as support for its argument that Margalit discloses the limitation “... having a memory space at least as large as the memory space of a magnetic disk or CD.” However, Appellants submit that at that time the Board was considering a prior version of claim 22, which did not include the present limitation “... having a memory space at least as large as the memory space of a magnetic disk or CD.” Again, Appellants respectfully submit that, at the time of the invention, it was well known that a memory size of a magnetic disk was approximately one megabyte. *See* Ex. E, Hyde Affidavit, ¶ 13. Thus, because a “single byte (or bit)” is not at least as large as the memory space of a magnetic disk or CD, the Examiner’s reliance on this reasoning was misplaced.

Margalit does not disclose all of the limitations of claim 22. Appellants respectfully submit that claims 22 is not anticipated by Margalit and is in condition for allowance. Claims 23, 24, and 26-28 depend from claim 22, and thus are also not anticipated by Margalit and are in condition for allowance.

4. Rejection of claims 29 and 30 under 35 U.S.C. § 103(a)

The Examiner rejected claims “29 and 20” under 35 U.S.C. § 103(a) as being unpatentable over Margalit in view of U.S. Patent No. 6,407,949 to Jha et al. Appellants have taken the Examiner’s reference to “claim 20” as having been intended to refer to claim 30. Appellants respectfully traverse.

As discussed above, Margalit does not disclose each and every limitation of the parent claim 22, and thus does not disclose each and every limitation of claims 29 and 30, which depend from claim 22 and incorporate all of its limitations. Further, one of ordinary skill in the art would have no reason to modify the device of Margalit to include a set of flash macros as disclosed by Jha. Margalit’s small memory would be wholly inconsistent with the division of an already very small memory into a set of flash macros, as disclosed in Jha.

Claim 29 recites “the non-volatile solid-state memory is divided into a plurality of zones, each of the plurality of zones being selectively accessible in response to a zone selection received via the USB plug.” Jha does not disclose this limitation. Jha discloses an ASIC that includes a flash memory array 130 including flash memory cells defining up to N different flash macros which can be independently accessed. Jha, col. 7:54-58. However, Jha does not disclose that each of the flash macros is selectively accessible in response to a zone selection received via a USB plug. The flash macros of the Jha ASIC are accessed according to requests from the microprocessor or other component of the ASIC itself (Jha, col. 11:2-3), not from a zone selection received from outside of the ASIC. Thus Jha does not disclose this limitation.

One of ordinary skill in the art would have no reason to modify the FCCS device of Margalit to include a flash memory divided into a set of flash macros, as disclosed by Jha. The independently-accessible flash macros of Jha are advantageous in a cellular telephone application because flash memory in an ASIC in a cellular telephone may need to be accessed “much more quickly than is required in other applications,” particularly for voice telephone calls, where “any delay necessitated by having to wait for a previous write operation to be completed before reading from the flash memory may be significant.” Jha, col. 2:7-25. However, there is no disclosure in Margalit that its memory may need to be accessed “much more quickly” than required in other applications, or that any delay by having to wait for a previous write operation to be completed before reading from the memory may be significant. The purpose of the Margalit device is to authenticate a user to access an external host computer or network. Margalit, col. 3:41-52. One of ordinary skill in the art would have no motivation to divide the small memory of a user authentication key into a set of flash macros as disclosed in Jha. Thus, there would be no need to add, and no benefit in adding, a memory divided into a set of flash macros as disclosed in Jha to the USB smart card token device of Margalit.

Neither Margalit nor Jha, alone or in combination, discloses all of the limitations of claim 29. Further, one of ordinary skill in the art would have no reason to modify the device of Margalit to include a set of flash macros as disclosed by Jha. Appellants respectfully submit that claim 29 is not obvious in view of the cited references and is in condition for allowance. Claim 30 depends from claim 29 and is therefore allowable for at least the same reasons.

CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the pending claims are in condition for allowance.

Respectfully submitted,

Dated: May 7, 2012

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APPENDIX A: CLAIMS APPENDIX

1.-21. (canceled).

22. A unitary portable data storage device which can be directly plugged into a universal serial bus (USB) socket of a computer and which is operative to function as an alternative to a magnetic disk or compact disk (CD), and which is capable of storing software for installation to the computer or of receiving and storing user's data present in the computer, the unitary portable data storage device comprising:

- a USB plug integrated into the unitary portable data storage device without an intervening cable capable of coupling the unitary portable data storage device directly to a USB socket on a computer;
- an interface allowing the unitary portable data storage device to communicate via the USB protocol and being coupled to the USB plug;
- a non-volatile solid-state memory, said memory being non-removable from the unitary portable data storage device and having a memory space at least as large as the memory space of a magnetic disk or CD to enable the unitary portable data storage device to serve as an alternative to a magnetic disk or CD; and
- a memory controller, the memory controller being coupled between the interface and the memory to control storage of data received via the USB plug in the memory in a manner to enable the unitary portable data storage device to serve as an alternative to a magnetic disk or CD, the data including at least user data that is not authorization data.

23. A unitary portable data storage device according to claim 22, wherein the memory controller is non-removable from the unitary portable data storage device.
24. A unitary portable data storage device according to claim 22, wherein the non-volatile solid-state memory is a flash memory.
25. (canceled)
26. A unitary portable data storage device according to claim 22, wherein the memory controller comprises a micro-controller.
27. A unitary portable data storage device according to claim 26, wherein the micro-controller includes a read-only memory which stores a program to control the operation of the micro-controller.
28. A unitary portable data storage device according to claim 22, wherein the unitary portable data storage device is sufficiently compact to maximize portability.
29. A unitary portable data storage device according to claim 22, wherein the non-volatile solid-state memory is divided into a plurality of zones, each of the plurality of zones being selectively accessible in response to a zone selection received via the USB plug.

30. A unitary portable data storage device according to claim 29, wherein one or more of said plurality of zones require a unique password received via the USB plug for access.

APPENDIX B: EVIDENCE APPENDIX

Pursuant to 37 C.F.R. § 41.37(c)(1)(ix), the following statement sets forth where the evidence relied upon in this appeal was entered in the record. Copies of these documents are being submitted herewith.

Exhibit	Description	Comments
A	"Aladdin Announces SmartHASP Software Protection on a Smart Card," Business Wire Press Release, July 2, 1998.	filed with Response to Oct. 5, 2010 Office Action on April 5, 2011
B	"eToken Pro Smart Card – Security and Strong Two-Factor Authentication."	filed with Response to Oct. 5, 2010 Office Action on April 5, 2011
C	"Aladdin eToken Pro Usbkey."	filed with Response to Oct. 5, 2010 Office Action on April 5, 2011
D	"Aladdin eToken Pro USB 72k – USB security key."	filed with Response to Oct. 5, 2010 Office Action on April 5, 2011
E	Affidavit of John Hyde under 37 C.F.R. § 1.132, November 28, 2005	filed with Response to May 26, 2005 Office Action on Nov. 28, 2005
F	Affidavit of Yongmin Kim under 37 C.F.R. § 1.132, March 17, 2005	filed with Amendment and Response to Sept. 20, 2004 Office Action on March 21, 2005

APPENDIX C: RELATED PROCEEDINGS APPENDIX

Pursuant to 37 C.F.R. § 41.37(c)(1)(x), copies of the following decisions by the Board in Appeal 2008-006002 are being submitted herewith.

1. Decision on Appeal, Appeal 2008-006002, dated November 20, 2009.
2. Decision on Request for Rehearing, Appeal 2008-006002, dated May 24, 2010.